

EXHIBIT F

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07:44:45 **1** should have raised it earlier with me and with them, and
 07:44:48 **2** perhaps there's some truth to that.
 07:44:50 **3** MS. STOLL-DeBELL: So my response to that is, Lawson
 07:44:53 **4** should not have to suffer for this, and we will suffer unless
 07:44:58 **5** you grant our motion. If we have to do a continuance and look
 07:45:01 **6** at hiring another expert, that's substantially more cost in a
 07:45:05 **7** case that has cost already a lot of time and money, frankly,
 07:45:11 **8** Your Honor.
 07:45:12 **9** THE COURT: I'm well aware of that one.
 07:45:14 **10** MS. STOLL-DeBELL: So, you know, and allowing them to
 07:45:17 **11** just get by with violating this rule and put on two experts is
 07:45:21 **12** not fair to Lawson either. It's very prejudicial.
 07:45:25 **13** THE COURT: I understand your point.
 07:45:26 **14** MS. STOLL-DeBELL: I would ask that you keep those
 07:45:28 **15** things in your mind, Your Honor.
 07:45:30 **16** THE COURT: I've had them in my mind as I've been
 07:45:33 **17** reading these things. I understand where you are and what the
 07:45:35 **18** situation is. It's clear from the papers. I probably could
 07:45:38 **19** have decided this without argument, but I felt like it was only
 07:45:44 **20** fair to hear. Okay, thank you.
 07:46:04 **21** Well, the scheduling order says only one expert per
 07:46:20 **22** discipline is permitted except by order of the Court. In
 07:46:26 **23** February, or in March, I guess it was -- when was it you made
 07:46:32 **24** your disclosures, 16(b) that you rely on?
 07:46:35 **25** MS. STOLL-DeBELL: October.

07:46:37 **1** THE COURT: October, yes. October ePlus identifies
 07:46:47 **2** its experts, describes their fields of expertise, and there's
 07:46:57 **3** significant overlap in them, very significant overlap. And
 07:47:12 **4** then there is identified what the true state of affairs is when
 07:47:23 **5** the expert reports are filed. And as it turns out, Mr. Weaver
 07:47:35 **6** is addressing both infringement and invalidity, and Mr.
 07:47:41 **7** Niemeyer is addressing a basic subject related to the issue of
 07:47:49 **8** infringement that is needed by Mr. Weaver in order to formulate
 07:47:54 **9** his opinions. Mr. Hilliard is addressing just two components
 07:48:04 **10** of the aspect of invalidity.
 07:48:15 **11** Right after that occurred -- when were those reports
 07:48:21 **12** filed, the infringement report?
 07:48:23 **13** MS. STOLL-DeBELL: I believe it was May 5th.
 07:48:26 **14** THE COURT: Within a couple of days after that, the
 07:48:33 **15** defendants complained of the problem to ePlus, and ePlus --
 07:48:35 **16** neither ePlus nor the defendants then came to the Court and
 07:48:39 **17** raised it at a point in time when something could have been
 07:48:43 **18** done about it.
 07:48:50 **19** Something can be done about it now, and then mindful
 07:48:58 **20** of the scheduling for motions *in limine*, ePlus thought the best
 07:49:02 **21** way to deal with it, after they got Lawson's response, was to
 07:49:06 **22** file a motion *in limine* promptly which they did and acted
 07:49:10 **23** properly in doing that.
 07:49:12 **24** The problem that I see here is that the Court has a
 07:49:18 **25** role in not clarifying what "one per discipline" means, and it

07:49:26 **1** is not right for the parties to be saddled with the
 07:49:34 **2** consequences of the Court's failure to be precise in its
 07:49:41 **3** orders.
 07:49:43 **4** Mr. Robertson is correct that the purpose of that
 07:49:47 **5** provision is to avoid redundant, cumulative expert testimony
 07:49:59 **6** and the situation that is presented when you have three experts
 07:50:04 **7** testifying essentially to the same thing and you're trying
 07:50:08 **8** to -- and one side is forced then to try to meet the number of
 07:50:16 **9** experts that the other side puts on.
 07:50:22 **10** That was the intent of the provision, and it's the
 07:50:25 **11** way it's been applied over the years. So I can't say ePlus's
 07:50:30 **12** interpretation of the word "discipline" is wrong in perspective
 07:50:35 **13** of its representations that there will be no overlapping
 07:50:41 **14** testimony. I can't say either that the testimony -- that the
 07:50:46 **15** interpretation of Lawson was wrong in respect of its
 07:50:50 **16** interpretation of the matter.
 07:50:54 **17** Under the circumstances, it's important to remember
 07:50:57 **18** that under Rule 1 of the Federal Rules, it is the purpose of
 07:51:03 **19** all the rules, federal and local, to achieve a prompt or a
 07:51:10 **20** speedy, just, and efficient resolution of cases. So this rule,
 07:51:19 **21** this order has to be interpreted in respect of the basic
 07:51:24 **22** concepts of fairness and justice as well.
 07:51:28 **23** Doing that in this case under the circumstances of
 07:51:31 **24** this case, so long as there isn't any overlapping testimony,
 07:51:39 **25** justice can best be served by denying this motion and allowing

07:51:45 **1** ePlus leave to have either -- I mean Lawson, excuse me, it's
 07:51:52 **2** been a long day -- to have time to have another expert if it so
 07:51:59 **3** desires if it feels like it's disadvantaged in the area of
 07:52:05 **4** source code. I think that -- I'm sure that your own people,
 07:52:12 **5** you can probably do that in-house, but if you need to go
 07:52:17 **6** outside, you can go outside, and you can meet Mr. Hilliard's
 07:52:27 **7** testimony with another expert if you so desire.
 07:52:31 **8** I think that in that way -- I regret the Court's
 07:52:36 **9** failure to define the matter more precisely, and I regret that
 07:52:44 **10** you all didn't bring this to me when it first came up, because
 07:52:48 **11** I would have solved it by extending your time for getting
 07:52:54 **12** experts and giving you some extra leeway had it been brought to
 07:53:01 **13** me, but I don't think that the result that should obtain here,
 07:53:07 **14** notwithstanding that you all didn't come to the Court as early
 07:53:12 **15** as you should have, is to prejudice the outcome of the case by
 07:53:17 **16** striking experts which will, in effect, mean that one party or
 07:53:23 **17** the other is left without evidence on a topic thereby
 07:53:26 **18** resulting, or almost assuredly resulting, in a Rule 50(b)
 07:53:32 **19** motion that will be based on something that's artificial and
 07:53:40 **20** not in the interest or the spirit of the enforcement of the
 07:53:43 **21** rules, nor do I think it's fair to keep Lawson tied to where it
 07:53:49 **22** is right now.
 07:53:50 **23** It doesn't have to have any other experts. I need
 07:53:54 **24** for you to fish or cut bait very quickly, but you have every
 07:54:00 **25** right to talk to your client and caucus among yourselves, and I

07:54:04 **1** didn't really mean to put you in the position that you had to
 07:54:08 **2** answer right today, but you handled it correctly by saying you
 07:54:13 **3** had to go talk to somebody, and you're absolutely right. You
 07:54:15 **4** had to.
 07:54:16 **5** So that will be the ruling in this motion. How much
 07:54:22 **6** more do we have in the way of motions? How many, Mr. --
 07:54:26 **7** MR. McDONALD: I think we have two left, Your Honor,
 07:54:28 **8** one on the demonstration system and the other on the third
 07:54:32 **9** party, the South Jersey customer's deposition, and two
 07:54:35 **10** demonstrations.
 07:54:37 **11** THE COURT: I think we ought to take a little break.
 07:54:40 **12** I'll tell you, I'm worried Ms. Peterson is going on strike here
 07:54:45 **13** anyway, so we'll take about a 15-minute recess, and then we'll
 07:54:50 **14** try to finish these up this afternoon.
 07:55:01 **15**
 07:55:01 **16** (Recess taken.)
 08:17:23 **17**
 08:17:29 **18** THE COURT: Which goes first, ePlus's four or
 08:17:41 **19** Lawson's nine? Excuse me, Mr. Robertson.
 08:17:44 **20** MR. ROBERTSON: Sorry, Judge.
 08:17:46 **21** THE COURT: Which goes first, ePlus's four or
 08:17:50 **22** Lawson's nine? They both are demonstrations sort of generally.
 08:17:59 **23** MS. ALBERT: I'll address ePlus number four first if
 08:18:03 **24** the other side doesn't --
 08:18:08 **25** THE COURT: Is that okay with you?

08:18:08 **1** MR. McDONALD: That's fine.
 08:18:10 **2** MS. ALBERT: So, Your Honor, ePlus's motion *in limine*
 08:18:20 **3** number four addresses these Lawson re-created legacy system
 08:18:27 **4** demonstrations that are purported to be demonstrations of
 08:18:32 **5** Lawson system version five and six. As an overview, on our
 08:18:39 **6** slide 14, the defendant has conceded that the alleged Lawson
 08:18:48 **7** legacy systems postdate the prior art date of the patents in
 08:18:53 **8** suit.
 08:18:54 **9** Much of the relevant source code for these systems
 08:18:58 **10** was created after August 1994 as demonstrated by the
 08:19:02 **11** defendant's own documents. Virtually all of the hardware,
 08:19:08 **12** middle ware, and operating system software that was used for
 08:19:12 **13** these demonstration systems postdates 1994.
 08:19:16 **14** The witness who --
 08:19:19 **15** THE COURT: You all talk about the legacy system.
 08:19:22 **16** What are you talking about? Is it V6 and V5?
 08:19:26 **17** MS. ALBERT: Correct, Your Honor. They are
 08:19:29 **18** represented by Lawson to be version five and version six
 08:19:34 **19** systems, but it is ePlus's contention that these are not
 08:19:39 **20** accurate depictions of the Lawson version five and version six
 08:19:45 **21** systems, because much of the relevant source code for these
 08:19:50 **22** systems was actually created after the fact. They postdate --
 08:19:56 **23** THE COURT: After the fact of what?
 08:19:58 **24** MS. ALBERT: After these systems were represented to
 08:20:02 **25** have been commercially available. They are also after the

08:20:06 **1** prior art date of the patents in suit, August 10th of 1994, so
 08:20:12 **2** they are not relevant to show any prior art system. And the
 08:20:17 **3** hardware, middle ware, and operating system software that was
 08:20:20 **4** used in these re-created demonstrations, virtually all of that
 08:20:26 **5** postdates 1994.
 08:20:28 **6** The witness who proffered the systems could not
 08:20:33 **7** authenticate that the systems were what they are purported to
 08:20:37 **8** be by Lawson, so under Rule 901, they should be excluded on
 08:20:42 **9** that basis. And it's ePlus's position that any demonstration
 08:20:47 **10** of systems would be highly prejudicial because they would be
 08:20:54 **11** likely to mislead the jury to think that these are actual
 08:20:58 **12** Lawson version 5.0 and version 6.0 systems when they are not.
 08:21:04 **13** THE COURT: Why does 5.0 and 6.0 come into the case
 08:21:08 **14** at all anyway?
 08:21:09 **15** MS. ALBERT: Well, I think under Your Honor's orders
 08:21:13 **16** on the various motions *in limine*, now the admissibility of
 08:21:18 **17** evidence related to these systems is limited to that one
 08:21:22 **18** element of the one claim that relates to the means for
 08:21:27 **19** searching for matching items in the database. I think that's
 08:21:32 **20** claim three of the '683 patent, and that's the only issue for
 08:21:38 **21** which --
 08:21:39 **22** THE COURT: How does this relate to the -- that's an
 08:21:43 **23** infringement issue, isn't it?
 08:21:45 **24** MS. ALBERT: I think it was related to a validity
 08:21:48 **25** issue in that Dr. Shamos dealt with that issue in his

08:21:54 **1** invalidity report, and I think --
 08:21:58 **2** THE COURT: Fill me in on that. Because this system
 08:22:02 **3** is for prior art; is that what that is?
 08:22:06 **4** MS. ALBERT: Well, I believe that they would intend
 08:22:09 **5** to put this demonstration on at trial in order to establish
 08:22:15 **6** that the Lawson version 5.0 and version 6.0 systems could
 08:22:20 **7** perform that element of that claim.
 08:22:22 **8** THE COURT: So that's an invalidity issue, because
 08:22:28 **9** it's prior art; is that what the point is?
 08:22:31 **10** MS. ALBERT: That's what Lawson's contention is, the
 08:22:34 **11** version 5.0 and version 6.0 systems are prior art systems, but
 08:22:39 **12** these demonstration systems are not prior art systems. They
 08:22:45 **13** don't predate the date of the patents because the source code
 08:22:48 **14** that was used for the systems actually postdates August of '94,
 08:22:54 **15** and the hardware, the middle ware, and the operating system
 08:22:58 **16** software postdates 1994. Can you turn to the next slide,
 08:23:03 **17** please.
 08:23:04 **18** Slide 15 illustrates some of the source code file
 08:23:11 **19** directories that were produced by Lawson relating to the source
 08:23:16 **20** code that was compiled in order to generate these demonstration
 08:23:23 **21** systems. We've highlighted just an excerpt of these -- it was
 08:23:34 **22** about a hundred-page document of the source code file listings
 08:23:39 **23** just to show that, you know, Lawson acknowledges that many of
 08:23:45 **24** the source code files that are included in the source code that
 08:23:48 **25** was used for these re-created demonstration systems actually